



November 6, 2001

Ms. Melissa L. Perkins  
Attorney for the City of Coppell  
Cooper & Scully, P.C.  
900 Jackson Street, Suite 100  
Dallas, Texas 75202

OR2001-5124

Dear Ms. Perkins:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154427.

The City of Coppell (the "city"), which you represent, received a request for "all reports filed by" a named individual. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

We first note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides that

the following categories of information are public information and not excepted from required disclosure under this chapter *unless they are expressly confidential under other law*:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1) (emphasis added). Section 552.022(a)(1) requires the release of completed reports, unless the information is excepted from disclosure under section 552.108 or expressly confidential under other law.

You contend that the submitted police reports are excepted from disclosure under section 552.101 in conjunction with common law privacy. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information that is protected by the common law right of privacy. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85

(Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The doctrine of common law privacy protects information that contains highly intimate or embarrassing facts about a person's private affairs, such that its release would be highly objectionable to a reasonable person, and the information must be of no legitimate concern to the public. *Id.*

Under section 552.101 in conjunction with common law privacy, information may be withheld from public disclosure in certain "special circumstances." *See* Open Records Decision No. 169 (1977). We consider "special circumstances" to refer to a very narrow set of situations in which release of the information would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. "Special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* You explain that the submitted information pertains to stalking offenses. You also point out that the requestor is the alleged offender. In this instance, the requestor is aware that the victim has communicated with the police department. Nevertheless, you assert and we agree that the release of the requested information might expose the victim to further conduct of the type that caused her to contact the police. Therefore, we conclude that the city must withhold this information in its entirety under section 552.101 in conjunction with common law privacy. As section 552.101 is dispositive, we do not address your other arguments against disclosure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

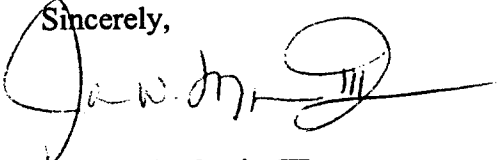
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dept. of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III", with a long horizontal flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 154427

Enc: Submitted documents

c: Mr. Hartley Nemerov  
600 South MacArthur, #2114  
Coppell, Texas 75019  
(w/o enclosures)